

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Vonage Holding Corp. Petition for	)	WC Docket No. 03-211
Declaratory Ruling Concerning an Order of	)	
the Minnesota Public Utilities Commission	)	

**COMMENTS OF CENTURYTEL, INC.**

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CenturyTel, Inc. (“CenturyTel”), through its attorneys, hereby urges the Commission ***not*** to grant the above-captioned petition (“Petition”) filed by Vonage Holdings Corp. (“Vonage”). In its Petition, Vonage seeks Commission preemption of an Order of the Minnesota Public Utility Commission (MPUC”) that Vonage’s voice-over-Internet-protocol (“VoIP”) service is subject to regulation by the MPUC.

**I. Introduction**

CenturyTel, headquartered in Monroe, Louisiana, is a leading provider of integrated communications services to rural markets. CenturyTel provides a variety of high-quality communications services to nearly 3 million customers in rural communities in 22 states, including local exchange, interexchange, and advanced services, wireless service, security monitoring, information services, and broadband and dial-up Internet access. As a rural local exchange carrier, CenturyTel has direct experience in multiple states dealing with Vonage and other packet-based providers of substitutes for traditional circuit-switched telephone service.

**II. Summary**

Vonage is not entitled to the relief it seeks. Vonage’s service is subject to regulation, no matter whether the Commission analyzes it under Minnesota or federal law. *First*, the recent decision of the United States District Court for the District of Minnesota (the

“Minnesota District Court”) finding that Vonage’s packet-based telephone service is an information service does not bind the Commission. *Second*, as a matter of law, Vonage’s packet-based telephone service is properly subject to regulation. It clearly meets the definition of a “telecommunications service” in the Communications Act of 1934, as amended (the “Communications Act”), and does not constitute an “information service.” Further, if the Commission determines that there is an intrastate component to Vonage’s service, then the MPUC properly classified it as a “telephone service” under Minnesota law.

### **III. The Minnesota District Court’s Decision Is Not Binding on the Commission**

The Vonage Petition arises out of a September 11, 2003 MPUC Order holding that Vonage’s packet-based telephony service constitutes “telephone service” under Minnesota’s public utility statutes, and that Vonage must therefore comply with regulatory requirements applicable to other telephone companies under Minnesota law.<sup>1</sup> Vonage simultaneously appealed the MPUC Order to the Minnesota District Court, and filed this Petition at the FCC. On October 16, 2003, the Minnesota District Court granted an injunction against enforcement of the MPUC’s order, finding that Vonage’s packet-based telephony service meets the definition of an information service under the Communications Act, and that federal law therefore preempts state public utility commission regulation of Vonage.<sup>2</sup>

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<sup>1</sup> *See Complaint of the Minnesota Dep’t of Commerce Against Vonage Holdings Corp. Regarding Lack of Authority to Operate in Minnesota*, Order Finding Jurisdiction and Requiring Compliance, Docket No. P-6214/C-03-108 (Minn. PUC Sept. 11, 2003), at 8 (“MPUC Order”), *injunction granted sub nom. Vonage Holdings Corp. v. Minnesota PUC*, Memorandum and Order, Civ. No. 03-5287 (MJD/JGL) (D. Minn. Oct. 16, 2003); *see also* Minn. Stat. § 237.01, subd. 7 (defining “telephone company”); 237.16, subd. 1)(b) (requiring a telephone company to obtain a certificate of public convenience and necessity before initiating service).

<sup>2</sup> *Vonage Holdings Corp. v. Minnesota PUC*, Memorandum and Order, Civ. No. 03-5287 (MJD/JGL) (D. Minn. Oct. 16, 2003).

The Commission is the expert agency charged with interpreting and implementing the Communications Act. While the Minnesota District Court's resolved some of the legal questions presented in the Petition, it does not bind the Commission, either in considering this Petition or in subsequent rulemakings in which the Commission may consider VoIP issues. The Commission was not a party to the MPUC or Minnesota District Court proceedings, nor did the MPUC or Minnesota District Court have any Commission order under review. Thus, the Commission cannot be bound under the doctrines of law of the case, res judicata, collateral estoppel, or other legal doctrines that might bind parties in subsequent proceedings. The Minnesota District Court's interpretation of the Communications Act, in finding that Vonage's service constitutes an information service, is only binding on the parties to that case, and not on the Commission or any appellate court that may ultimately review the Commission's decision.<sup>3</sup>

#### **IV. Vonage's Service Is Subject to Regulation as a Telecommunications Service**

Whether the Commission ultimately determines that Vonage's packet-based telephony service is jurisdictionally interstate, or whether the Commission finds a distinct

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<sup>3</sup> Thus, the constraint on Commission action imposed by the Ninth Circuit United States Court of Appeals ("Ninth Circuit") in its recent opinion in *Brand X Internet Services v. FCC*, \_\_\_ F.3d \_\_\_, 2003 WL 22283874 (9<sup>th</sup> Cir. Oct. 6, 2003), is wholly inapplicable to this case. The Ninth Circuit grounded its *Brand X* holding in the entirely unremarkable axiom that, under principles of *stare decisis*, it is bound by its own precedents. *Brand X*, 2003 WL 22283874, \*7. A prior Ninth Circuit panel, in *AT&T v. City of Portland*, 216 F.3d 871 (9<sup>th</sup> Cir. 2000), faced with the Commission's explicit statement in a brief filed in that proceeding that it had not determined the regulatory classification of broadband Internet access provided over a cable modem platform, proceeded to address the question. When the issue again came before the Ninth Circuit in *Brand X*, this time on appeal from a Commission order resolving the question, the Ninth Circuit determined that the prior panel had already resolved the precise question of statutory interpretation at issue in a manner that conflicted with the Commission's decision. Because the court determined that its limited exception to *stare decisis* for subsequent interpretations of a statute by an expert agency charged with its administration did not apply, the Ninth Circuit found that it could not grant *Chevron* deference when reviewing a subsequent Commission order that was inconsistent with its prior holding. *Id.*

intrastate component, Vonage's service constitutes a telecommunications service under the Communications Act and a "telephone service" under Minnesota law, and is subject to regulation as such.

The Communications Act of 1934 distinguishes telecommunications services from information services.<sup>4</sup> Contrary to Vonage's arguments in its Petition, under the Communications Act, Vonage's packet-based telephony service constitutes a telecommunications service, not an information service. The Communications Act defines "telecommunications service" in functional terms, not based on the precise encoding format in which a provider chooses for transmission.

Vonage's Petition reveals that there is no functional difference between Vonage's service and that of an ordinary local exchange carrier. The calling party's spoken words enter one phone connected to Vonage's service, and precisely the same words, in precisely the same order, emerge in audible, spoken form from the called party's telephone at the destination location. The calling party's voice enters an ordinary analog telephone, connected to a Vonage-supplied converter that encodes the call for IP transmission. Vonage routes that stream of packets over the Internet to its own facilities. There, it further converts its customer's encoded voice signal to a format suitable for transmission over the circuit-switched network, and interconnects to the PSTN via ordinary local exchange lines it purchases from CLECs around the nation. If necessary, the

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<sup>4</sup> A "telecommunications service," as defined in the Communications Act, is "the offering of telecommunications directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used*." 47 U.S.C. § 153(46) (emphasis added). The Communications Act defines "telecommunications," in turn, as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received." 47 U.S.C. § 153(43).

An "information service," in contrast offers "a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available of information via telecommunications . . . ." 47 U.S.C. § 153(20).

terminating carrier then converts the signal to analog electrical signals from which the called party's telephone can generate audible sound waves. Petition at 5-7. In the words of one Vonage user, "[w]hen you're using Vonage, you get a dial tone and would never know you were not using POTS . . . . I made a few calls. Perfect. In fact, the line was cleaner than the one I have at home."<sup>5</sup>

### **A. Vonage Is a Telecommunications Carrier under the Communications Act**

Vonage is a telecommunications carrier under the definition in the Communications Act. With some exceptions not relevant here, a telecommunications carrier provides telecommunications services, namely telecommunications (the transmission between or among points specified by the user, of information of the user's own design and choosing without change in form or content) offered for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *see* 47 U.S.C. § 153(43, 44, 46).

#### **1. Vonage Is Providing "Phone-to-Phone" IP Telephony**

In the *Report to Congress*, the Commission defined phone-to-phone IP telephony using four characteristics, namely: (1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan; and (4) it transmits customer information without net change in form or content.<sup>6</sup> The Commission concluded that such "phone-to-phone" IP telephony is a telecommunications service, *Report to Congress* at paras. 88-89.

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<sup>5</sup> John C. Dvorak, *Free Phone Calls*, PC MAGAZINE, August 19, 2003, at 57 (attached to the Vonage Petition as Exhibit 1).

<sup>6</sup> *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) ("*Report to Congress*") at para. 88.

In its Petition, Vonage concedes that it meets the first and third criteria, Petition at 17. In fact, however, it meets all four. *First*, with respect to CPE, Vonage concedes that a substantial portion of its traffic originates from and terminates to ordinary telephones, Petition at 5. To accept Vonage's argument that its MTA boxes constitute non-standard CPE sufficient to change the fundamental character of its service, the Commission would have to agree that Vonage's placement of the IP gateway at or near the customer's premises distinguishes it in a legally significant way from other IP telephony providers that maintain the IP gateway elsewhere within the network. Vonage offers no justification for this patently-suspect proposition and CenturyTel can ascertain none.

*Second*, Vonage's service in fact results in no net change in protocol to the end user. Whether the Commission views the initial and final protocols as "sound waves propagating in air" or "analog electrical signals generated and received by an analog telephone," the result is the same: what enters the network on one end emerges at the other in precisely the same form. As the Commission explained in its Universal Service *Report to Congress*, "certain protocol processing services that result in no net protocol conversion to the end user . . . are deemed to be telecommunications services."<sup>7</sup>

## **2. Vonage Meets the NARUC Test for Identifying a Common Carrier**

The Commission has held that the definition of a "telecommunications carrier," added to the Communications Act in 1996, is coextensive with the previously existing definition of a "common carrier."<sup>8</sup> The D.C. Circuit has developed a two-part test for determining whether an entity is acting as a communications common carrier, namely that a common carrier, first,

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<sup>7</sup> *Report to Congress* at para. 50.

<sup>8</sup> *See, e.g., Cable and Wireless, PLC*, 12 FCC Rcd 8516, 8522 ¶ 13 (1997).



“holds himself out to serve indifferently all potential users,” *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976), and, second, allows users to “transmit intelligence of their own design and choosing,” *Id.* Vonage meets both parts of this test and is therefore must be regulated as such for public policy reasons.

*First*, Vonage holds itself out to provide local and long distance telephone services to the public in a nondiscriminatory fashion. On its web site and in advertising, Vonage promotes itself as the “broadband phone company.”<sup>9</sup> It advertises per-minute long-distance rates for calling distant global points,<sup>10</sup> states that “you get local, regional and long distance U.S. and Canadian calling,” and urges potential customers to “keep your phone number, change your phone company.”<sup>11</sup> Vonage customers can get call waiting, voice mail, call forwarding, call transfer, caller ID, enhanced 411 dialing, telephone number portability, three-way calling, call hunt, and other services traditionally provided by telecommunications carriers.<sup>12</sup> Vonage even assesses its customers a \$1.50 per month “Regulatory Recovery Fee,” which it explains is “a fee that Vonage charges its customers to recover required costs of Federal and State Universal Service Funds as well as other related fees and surcharges. [The customer’s] total Regulatory Recovery Fee reflects a \$1.50 surcharge for every phone number . . . including primary voice lines, second lines, fax lines, Toll Free Plus(SM) numbers and Virtual Phone Numbers(SM).”<sup>13</sup>

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<sup>9</sup> See [www.vonage.com](http://www.vonage.com) (promoting Vonage as “The Broadband Phone Company”) (visited Oct. 27, 2003). Limited excerpts from Vonage’s web site illustrating this and the other points made in this paragraph are attached as Exhibit A.

<sup>10</sup> See [http://www.vonage.com/rate\\_plans\\_international.php](http://www.vonage.com/rate_plans_international.php) (visited Oct. 27, 2003).

<sup>11</sup> See [http://www.vonage.com/area\\_codes\\_inp.php](http://www.vonage.com/area_codes_inp.php) (visited Oct. 27, 2003).

<sup>12</sup> See <http://www.vonage.com/features.php> (visited Oct. 27, 2003).

<sup>13</sup> See [http://www.vonage.com/learn\\_center.php](http://www.vonage.com/learn_center.php) (explanation listed under Question 12, “What are Regulatory Recovery Fee surcharges?”) (visited Oct. 27, 2003).

Vonage charges this fee despite its claims that it cannot accurately ascertain the extent of its liability for regulatory fees, taxes, and other surcharges applicable to intrastate and interstate telecommunications services, Petition at 30, and despite the fact that the Commission's *Telecommunications Provider Locator* does not include Vonage among its list of providers that file the Commission's Form 499-A and contribute to universal service.<sup>14</sup>

*Second*, Vonage allows its users to transmit information of their own design and choosing. In contrast to an information service provider, which offers information storage, retrieval, or other processing, Vonage simply transmits the information its end user speaks into his or her telephone to the desired location indicated by standard dialing information. Vonage's core service simply transmits its customer's packetized voice information as expeditiously as possible to the called party, without change.

#### **B. Vonage Is Not an Information Service Provider**

Nowhere in Vonage's description of its "Broadband Phone" service is there any mention of information generation, storage, retrieval, or other manipulation that would signify an information service. Rather, Vonage transmits information of its user's choosing – namely, the information conveyed by the user's voice – without any change in form or content.

Vonage offers five factors that it asserts are legally significant in determining that its service should be considered an information service, namely: (1) that Vonage customers cannot "dial in" over the PSTN, but must use a high-speed Internet connection, Petition at 4; (2) that Vonage customers have a degree of mobility in that they can access the service "virtually anywhere

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<sup>14</sup> See *Telecommunications Provider Locator*, Industry Analysis & Technology Division, Wireline Competition Bureau, Federal Communications Commission (rel. Feb. 2003) (available at [www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/Locator/locat02.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Locator/locat02.pdf)) (visited Oct. 27, 2003).

in the world,” *id.*; (3) that Vonage customers must either plug their standard analog telephones into a special converter box that encodes the analog electrical signals generated by the telephone for packet-based transmission, or purchase a telephone that integrates these two functions in a single unit, Petition at 5-6; (4) that Vonage “performs a net protocol conversion,” Petition at 6-7; and (5) that Vonage itself is an end user of telecommunications services.” None of these facts, however, support the conclusion Vonage urges on the Commission.

### **1. Neither Mobility nor “Dialing In” Define an Information Service**

The Commission has never identified either the mobility of a subscriber or the act of “dialing in” to a service as legally relevant to the classification of the service as an information or telecommunications service. Indeed the Commission classifies many services that offer a degree of mobility as telecommunications services, including CMRS services, paging services, foreign exchange, virtual NXX, and other services. Many providers of these telecommunications services have, like Vonage (Petition at 8-9), complained that mobility dramatically complicates their efforts to comply with certain regulatory requirements, such as E911, CALEA, number portability, and others. The complexity of these efforts will likely increase if, as the Petition states, Vonage is currently testing the compatibility of its service with Persona Digital Assistant (PDA) devices and WiFi-enabled phones. At no time, however, has the Commission concluded that this difficulty transforms the carrier’s service into an information service.

Further, the Commission has never considered “dialing in” to be a hallmark of an information service. A wide array of telecommunications services, such as local exchange, exchange access, and interexchange telecommunications services are generally available to end users today without the need for “dialing in” to a specific provider. Conversely, many telecommunications services today do require the customer to “dial in.” For example, customers may take advantage of “casual” or dial-around long distance services by dialing an access number

(10-10-123, etc.). Similarly, “dialing in” was required to reach services offered by early long distance competitors using Feature Group A or Feature Group B access before equal access and dialing parity were widely implemented. On the information services side, while millions of Americans today obtain access to information services by “dialing in” to their chosen Internet service provider, high-speed, “always-on” connections to the Internet minimize or eliminate the dialing function while retaining their character as information services.

## **2. The Use of Additional CPE, Without More, Does Not Define an Information Service**

Vonage asserts that its packet-based telephony service must be an information service because its customers must plug their ordinary analog telephones into a “Multimedia Terminal Adapter,” or “MTA” to use the Vonage service. Petition at 5. These MTAs encode the analog electrical signals generated by the telephone for packet-based transmission. In addition, Vonage asserts that some equipment vendors have begun producing telephones that combine both functions in a single box. Vonage fails to explain why the fact that it converts the call to IP to transport it all or part of way to its destination renders the transmission an information service. The Commission has already explained in other contexts that IP is simply one choice of transmission protocol and that, in fact, telecommunications services may employ IP transmission protocol.<sup>15</sup>

In fact, the MTA’s conversion of an end-user’s spoken information from analog electrical impulses into packets is no more remarkable or significant than the analog telephone’s original conversion of that information from sound waves propagating in air into those electrical

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<sup>15</sup> See, e.g., *Communications Assistance for Law Enforcement Act*, Third Report and Order, 14 FCC Rcd 16794 (1999), para. 47 (noting that “packet data and packet-switching technology are potentially usable for both information services and telecommunications services.”), *aff’d in relevant part sub nom. United States Telecom Ass’n v. FCC*, 227 F.3d 450 (D.C. Cir. 2000); *Report to Congress* at para. 101 (“[W]e acknowledge that there may be telecommunications services that can be provisioned through the Internet.”).

impulses, or the further conversion of that information within the network into light pulses or radio waves. What is significant is that the call both originates and terminates on an ordinary telephone. Without more, the use of Internet protocol does not, in itself, transform a telecommunications service into an information service. As the Commission recognized in the *Report to Congress*, at para. 67, for example, “[t]he provision of leased lines to Internet service providers . . . constitutes the provision of interstate telecommunications.”

### **3. Vonage’s Service Results in No Net Change in Protocol**

CenturyTel agrees with the Petition that one hallmark of an information service is a net change in protocol. Petition at 13. As early as 1980, the Commission first distinguished a class of largely unregulated “enhanced services,” in which “computer processing applications are used to act on the content, code, protocol, and other aspects of the subscriber’s information.”<sup>16</sup> The Commission contrasted these services to a “basic service” that “offers a pure transmission capability over a communication path that is virtually transparent in terms of its interaction with customer-supplied information.”<sup>17</sup> The Commission has carved out from the enhanced-services category at least three forms of protocol conversion that, because they result in no net protocol conversion to the end user, constitute part of a basic, regulated telecommunications service, namely those (1) involving communications between an end user and the network itself, such as

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<sup>16</sup> *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)* (“*Computer II Final Decision*”), Final Decision, 77 FCC 2d 384, para. 97 (1980), *aff’d on reconsideration*, 84 F.C.C. 2d 50 (1980) and 88 F.C.C. 2d 512 (1981), *aff’d sub nom. Computer and Communications Industry Ass’n v FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983). The Commission has determined that all enhanced services also meet the definition of an information service now a part of the Communications Act, but that the term “information service” may encompass services that were not previously classified as enhanced services. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd 21905 (1996), para. 103 (“*Non-Accounting Safeguards Order*”).

<sup>17</sup> *Id.* at para. 96.

the creation of electronic touch tones or other signaling information associated with completing a call; (2) in connection with the introduction of a new basic network technology, which requires protocol conversion to maintain compatibility with existing customer premises equipment; and (3) to facilitate the interconnection of networks that operate on different protocols, with the end result that there is “no net protocol change between the ends of the basic common carrier service involved.”<sup>18</sup>

In its Petition, Vonage erroneously asserts that its packet-based telephony service results in a net protocol change and therefore constitutes an information service, explaining that it converts “asynchronous IP packets generated by the customer’s computer equipment [*i.e.*, telephone and MTA] into the synchronous TDM format used by the telephone network (and vice versa,” Petition at 12-13. This analysis ignores the fundamental fact that, while Vonage may perform one or more protocol conversions, there is *no net conversion to the end user*” that would render the service an information service.<sup>19</sup> Rather, Vonage mistakenly begins its analysis only after the calling party’s voice has already been transformed twice, first into electrical impulses, and again into packets. Thus, Vonage mistakenly concludes that its further conversion of the signal between circuit- and packet-switched protocols somehow constitutes protocol conversion sufficient to meet the definition of an information service.

To the contrary, Vonage’s service fits squarely within the letter and policy rationale of at least two of the Commission’s categories of “no net” protocol conversion services that are treated as basic telecommunications services. First, the Commission has already

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<sup>18</sup> *Communications Protocols under Section 64.702 of the Commission’s Rules and Regulations*, Memorandum Opinion, Order, and Statement of Principles, 95 F.C.C.2d 584 (1983), para 18 (“*Protocol Conversion Order*”); *see also, id.* at paras. 13-26; *Non-Accounting Safeguards Order*, at para. 106.

<sup>19</sup> *Non-Accounting Safeguards Order* at para 106.

classified as basic the introduction of new basic network technologies, for the very reason

Vonage now seeks to exploit. As the Commission stated in 1983,

[T]here is currently a trend towards the use of digital loops which will interface with customer premises equipment using a digital protocol interface. A potential problem might arise if a call were placed between a user of equipment which employs such a digital interface and a user using the more traditional analog interface (with appropriate conversion equipment employed within the network): there would be a net protocol conversion within the network for such a call to proceed, *i.e.*, from a digital to an analog protocol between the ends of that call. This could be thought of as invoking the definition of enhanced service, *although the service itself would remain a switched message service otherwise unchanged except for the characteristics of the electrical interface.*<sup>20</sup>

The Vonage MTA performs a protocol conversion much the same way as the “digital protocol interface” described by the Commission two decades ago. It enabled the customer’s CPE to “talk” to a transmission medium that operates using a different protocol. The overall service to the end user, however, contains no “net” protocol conversion. With the multiplicity of carriers and transmission protocols and media in use in the network today, the Commission would define telecommunications services largely out of existence were it to accept Vonage’s argument that a mere intermediate change in transmission protocols that creates no net change to the end user rendered a service an information service, and not a telecommunications service.

Second, the Commission has specifically excepted protocol conversions that “take place solely within a carrier’s network to facilitate the provision of a basic network service,” *i.e.*,

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<sup>20</sup> *Protocol Conversion Order*, at para 16 (emphasis supplied); *see also Non-Accounting Safeguards Order*, at para. 106 (Holding that “no net” protocol conversion services, including protocol processing “in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE),” are telecommunications services, and not “information services” under the definitions in the Communications Act.

to facilitate interconnection between carriers that use different transmission protocols, from the definition of “information service.”<sup>21</sup> This exception fits Vonage’s actions precisely. As Vonage itself explains, its “service provides an interface between otherwise incompatible network protocols of the Internet and the PSTN.” Petition at 13.

#### **4. The Fact that Vonage Purchases Telecommunications Services Does Not Render It an Information Services Provider.**

In its Petition, Vonage explains that it purchases local telecommunications services and receives associated telephone numbers in metropolitan areas across the country. Petition at 7. It then assigns one or more telephone numbers it receives to each of its customers. *Id.* These assertions, however, do not establish that Vonage is not a telecommunications carrier. Indeed, to the contrary, it appears clear that Vonage is not purchasing these services for its own use in operating its business, but rather as an input to the service it provides. Essentially Vonage appears to be acting as a reseller of these local exchange services, and should be regulated as such.

#### **C. The MPUC Properly Interpreted Its Own Enabling Statute**

Even if the Commission perceives a separate intrastate component to Vonage’s service, it still must decline to grant the relief Vonage requests. In its Order, the MPUC properly discerned that, like the services provided by virtually every telecommunications carrier and ISP, Vonage’s service may be used in both the intrastate and interstate jurisdictions.<sup>22</sup> The MPUC has jurisdiction over each “telephone company” providing service in Minnesota. Minnesota law prohibits any person from providing “telephone service in Minnesota without first obtaining a determination that the person possesses the technical, managerial, and financial resources to

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<sup>21</sup> *Non-Accounting Safeguards Order*, at para. 106; *Protocol Conversion Order* at para. 18.

<sup>22</sup> *MPUC Order* at 8.



provide the proposed telephone services and a certificate of authority from the commission under terms and conditions the commission finds to be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules,” Minn. Stat. § 237.16, subd. 1(b).

Minnesota does not, however, define the term “telephone service” by statute. Rather, the Minnesota Supreme Court has determined that whether a company “is supplying a telephone service is a question of law to be determined on the basis of the operative facts determined by the [MPUC],” *Minnesota Microwave, Inc. v. Public Service Comm’n*, 190 N.W.2d 661 (Minn. 1971). The Commission fulfilled the duty the Minnesota legislature and courts have bestowed upon it, namely to resolve the legal question as to whether Vonage’s service constitutes a telephone service under Minnesota law, determining that Vonage “holds itself out as providing all-inclusive home phone service and advertises that it replaces a customer’s current phone company.” *MPUC Order* at 8.

Vonage is incorrect when it argues that the MPUC lacks the authority to regulate the intrastate component of Vonage’s packet-based telephony service, if there is one. Vonage essentially asserts that, because its service “touches” the Internet, and because the Commission has held that Internet access service is jurisdictionally interstate, the Commission must preempt any MPUC jurisdiction. As explained above, however, Vonage’s services constitute telecommunications services, not information services. As such, they are fundamentally different from the Internet services that the Commission has held are jurisdictionally interstate.<sup>23</sup>

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<sup>23</sup> See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation For ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC

The Commission has never held that, without more, the fact that a service uses the Internet (or IP-based private networks, for that matter) renders it a jurisdictionally interstate information service.

Here, Vonage customers communicate between two points of the user's choosing, namely the location of the calling and called parties. The geographic position of each of these parties is knowable, even when one of the parties is communicating through the Internet. While the process of identifying the location of IP-based callers may be different and less straightforward than the process for locating a user of a wireline circuit-switched network, the Commission has successfully directed carriers, including CMRS carriers that serve large and mobile customer bases, to overcome difficulties this mobility creates for a host of purposes, including implementing E-911 capability, identifying the interstate portion of the carrier's revenues for purposes of contributing to federal universal service mechanisms, and implementing local number portability, among others. The fact that it may (or may not) be more difficult for Vonage to do so than for some other carriers constitutes no basis on which to classify Vonage's service for regulatory or jurisdictional purposes.

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Rcd 3689 (1999), para. 18, *vacated and remanded on other grounds sub nom. Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

**V. Conclusion**

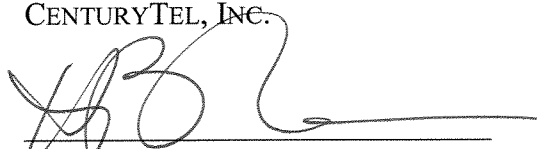
For the foregoing reasons, CenturyTel urges the Commission not to grant the Declaratory Ruling Vonage seeks in its Petition. To the extent the Commission seeks to clarify the nature of all VoIP services, it should commence a comprehensive rulemaking to consider in a comprehensive way how to classify these services and the implications of such classification.

John F. Jones  
Vice President, Federal Government Relations  
CENTURYTEL, INC.  
100 Century Park Drive  
Monroe, Louisiana 71203  
(318) 388-9000

October 27, 2003

| DC\629893.1

Respectfully submitted,  
CENTURYTEL, INC.

A handwritten signature in black ink, appearing to read 'KB', is written over a horizontal line.

Karen Brinkmann  
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Counsel for CENTURYTEL, INC.

**Exhibit A**

**(limited excerpts from Vonage's Internet web site)¶**



Username:

Password:

[Forget](#)

[HOME](#)
[RATE PLANS](#)
[AREA CODES](#)
[FEATURES](#)
[LEARNING CENTER](#)
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**New Lower Prices!**

Use your broadband internet connection for great savings every month

Unlimited Calls to ANYWHERE in the USA and Canada!

Check out these great features and benefits!

- [FREE Call Waiting](#)
- [FREE Voicemail](#)
- [FREE Call Forwarding](#)
- [FREE Repeat Dialing](#)
- [Great International Rates](#)
- [FREE Call Transfer](#)
- [FREE Caller ID Block](#)
- [Int'l Fees to Canada Waived!](#)
- [Any area code of your choice](#)
- [Virtual Phone Numbers](#)
- [Keep your current number](#)
- [Money-Back guarantee](#)

**SIGN UP NOW!**

### GREAT INTERNATIONAL RATES!

	Hong Kong	5¢ /min		London	5¢ /min		Mexico City	6¢ /min
	Canada	Free		Moscow	5¢ /min		New Delhi	19¢ /min
	Paris	5¢ /min		Sao Paulo	6¢ /min		Sydney	6¢ /min
	Tel Aviv	6¢ /min		Tokyo	6¢ /min		Rome	6¢ /min
	Berlin	5¢ /min		Prague	6¢ /min		Santiago	6¢ /min

[See all of our great international rates](#)

**SMALL BUSINESS UNLIMITED PLAN**

**NOW ONLY \$49.99 MONTH**

INCLUDING A FREE FAX LINE

CLICK TO LEARN MORE

### Vonage In The News



"Vonage, a company that routes calls through your Internet connection charges \$40\* a month for unlimited local and long distance plus all the necessary hardware." [more](#)

### Vonage Today

Vonage and SkyFrames Join Forces to Bring Broadband Telephony, Satellite, and Wireless Technology to U.S. Troops in Iraq for the Holidays [more](#)

**New!**

Now add a **fax** line for just **\$9.99/month\***

\* Fax Line is Free with Small Business Accounts

[Back](#)

**New York State of Mind?**

[Back](#)

**\$24.99/month**

Unlimited local and regional calling, plus **500** long distance minutes to call anywhere in the U.S. & Canada.

**Residential Premium Unlimited**

**Residential Unlimited Local**

**Small Business Unlimited**

**Small Business Basic**

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Username:

Password:

[Forget](#)

[HOME](#)[RATE PLANS](#)[AREA CODES](#)[FEATURES](#)[LEARNING CENTER](#)[SIGN UP](#)[E-Mail This Page](#)**Local Number Portability**

## Keep Your Phone Number

*Change Your Phone Company.*

### Transferring Your Phone Number Is Easy

When Vonage offers your area code and your rate center (the first three digits of your number after the area code), there's a good chance we can help you keep your existing phone number if you choose Vonage phone service. A handy tool, located in the Quick Reference section located to the right, can easily determine if we can help you keep your number.

### How To Transfer Your Number To Vonage

1. Determine if your existing phone number can be transferred
2. Download a [Transfer Authorization Form](#)
3. Obtain the first page of your most recent phone bill with the number you wish transferred
4. Fax the completed form and phone bill toll free to 1-866-281-3308

### Transferring Your Number - The Timing

Transferring your number can take at least 15 - 20 business days upon receipt of complete and correct paperwork. Vonage will keep you informed of the transfer process via email along the way. We'd like the process to go faster, but your existing phone company has to release the number first.

### What Happens While Your Number Is Being Transferred

While your number is being transferred, Vonage will assign you a temporary number that you can use for both incoming and outgoing calls. Then, when your number is transferred, we'll inform you via email and your number will be transferred seamlessly. Your temporary Vonage number then will be inactive.

### What Happens If Your Number Cannot Be Transferred

If Vonage cannot transfer your number it still makes sense to get Vonage and start saving now. You may elect a new Vonage number in your area or elsewhere. Or, you may elect to keep your existing phone number with minimal service and add another Vonage number that will help you save big on outgoing calls. It's your choice if you are like most people you'll enjoy considerable savings.

### If you are a DSL Subscriber

DSL subscribers pose a special situation as they must keep their existing phone numbers to maintain a high speed connection to Vonage. In this instance, we will assign you a new Vonage number and you can begin enjoying the benefits of Vonage without delay.

### Quick Reference

- **It's Free**
- **Lets you move your current number to Vonage**
- **Moving your number can take several days, depending on your current telephone provider**
- **Learn if we can transfer your existing number here:**

Please enter your area code and the first three digits of your phone number.

-  -XXXX

- **Download**  
[Letter of Authorization](#)



Username:

Password:

[Forget](#)

[HOME](#)[RATE PLANS](#)[AREA CODES](#)[FEATURES](#)[LEARNING CENTER](#)[SIGN UP](#)[E-Mail This Page](#)[Voicemail](#)[Dialing 911](#)[Call Forwarding](#)[Virtual Phone Number](#)[Fax](#)[Online Billing](#)[Guarantee](#)[Refer](#)

## You get local, regional, and long distance U.S. and Canadian calling.

### Check out these great features!

Click any bullet below for more information.

#### Advanced Services:

- [Adding additional lines to your account](#)
- [Free Area Code Selection](#)
- [Free Telephone Number Portability](#)
- [Virtual Phone Number](#)
- [Toll Free Plus](#)
- [Fax Service](#)
- [Enhanced 411 Dialing](#)
- [Free Real Time Billing Information](#)
- [Free Real Time Online Account Management](#)

#### Great Benefits:

- [Keep Your Existing Phone Number](#)
- [Great International Rates](#)
- [Free Calls to Any Other Vonage Subscriber](#)
- [Free Phone Adapter](#)
- [Money-Back Guarantee](#)
- [Refer-A-Friend Program](#)
- [Free Live Customer and Technical Support Via Toll-Free Telephone and Online](#)

#### Phone Features:

- [Free 3 Way Calling](#)
- [Free Call Hunt](#)
- [Free Personalized Voicemail](#)
- [Free Call Forwarding](#)
- [Free Call Transfer](#)
- [Free Call Waiting](#)
- [Free Caller ID](#)
- [Free Caller ID Block \(\\*67\)](#)
- [Free Repeat Dialing](#)
- [Free Call Return \(\\*69\)](#)
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**Care Center**

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## Frequently Asked Questions: Regulatory Recovery Fee

- [What is the Regulatory Recovery Fee?](#)

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### What is the Regulatory Recovery Fee?

The Regulatory Recovery Fee is \$1.50 per phone number. This is a fee that Vonage charges its customers to recover required costs of Federal and State Universal Service Funds as well as other related fees and surcharges. Your total Regulatory Recovery Fee reflects a \$1.50 surcharge for every phone number you have including primary voice lines, second lines, fax lines, Toll Free Plus<sup>SM</sup> numbers and Virtual Phone Numbers<sup>SM</sup>.

[Close Window](#)